

State of Florida

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DIVISION OF LEGAL SERVICES
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Public Service Commission

UNRECORDED
FILE COPY

August 1, 1994

Judge Paul M. Glenn
U.S. Bankruptcy Court
4921 Memorial Way
Tampa, Florida 33634

Re: Case No. 94-6876-861;

PSC Docket No. 930944-WS - Revocation by Florida Public Service Commission of Certificates Nos. 451-W and 382-S Issued to SHADY OAKS MOBILE-MODULAR ESTATES, INC. in Pasco County, Pursuant to Section 367.111(1), F.S.

Dear Judge Glenn:

Shady Oaks Mobile-Modular Estates, Inc. (Shady Oaks or utility) is a Class C water and wastewater utility regulated by the Florida Public Service Commission (Commission). It has come to the Commission's attention that the utility has filed for bankruptcy. In light of those circumstances, the purpose of this letter is just to inform the Court of the pending proceedings at the Commission which involve this utility.

The Commission has initiated a revocation proceeding against this utility (Docket No. 930944-WS), wherein Staff is recommending to the Commission that the utility's certificate to operate its water and wastewater systems should be revoked. The hearing regarding this matter will be held on August 4, 1994, in Zephyrhills, Florida. In another docket, Docket No. 900025-WS, the Commission fined the utility a total of \$62,572 (the amount of its rate base plus an additional \$2,000) for the utility's failure to comply with the Commission's statutes, rules, and orders.

As you can see, we are going forward under the provisions of Section 362(b) of the Bankruptcy Code since the Commission is an agency with regulatory and police power. The facts related to the Commission proceedings are set forth below for your convenience.

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On March 7, 1989, the utility signed a Consent Final Judgment with the Department of Environmental Protection (DEP). The utility agreed to construct an additional effluent disposal system, to eliminate discharge from the plant, and to establish a new percolation pond. The utility agreed to submit an application for a construction permit within 60 days of the date of the order.

On January 10, 1990, Shady Oaks applied for a staff-assisted rate case (Docket No. 900025-WS). On February 8, 1991, the Commission issued proposed agency action (PAA) Order No. 24084, which approved a rate increase and required the utility to do the following:

- 1) File a request for acknowledgement of a restructure and a name change;
- 2) Bring the quality of service to a satisfactory level;
- 3) Spend at least 85 percent of the allowance for preventative maintenance, or submit a written schedule showing what monthly maintenance will be implemented, along with a statement of the reasons such funds were not spent for preventative maintenance;
- 4) Install meters for all of its customers; and
- 5) Escrow a certain portion of the monthly rates.

On July 5, 1991, Judge Wayne L. Cobb with the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, issued an Order to Show Cause why Shady Oaks should not be punished for contempt of Court for willfully and deliberately violating a 1983 order of the Court that prohibited the utility from charging more than \$25 per month as a service maintenance fee (which included the provision of water and wastewater service). The July 5, 1991 order further enjoined the utility from collecting the utility rates established by this Commission and ordered that the \$25 per month service maintenance fee be tendered to the Clerk of the Circuit Court. In August 1991, both injunctions were lifted and the utility was able to begin collecting revenues.

The utility never applied for its construction permit as required by the Consent Final Judgment. Therefore, on July 8, 1991, as a result of a stipulated settlement of a motion for contempt brought against the utility by DEP, Judge Lynn Tepper ordered the utility to interconnect its wastewater system with Pasco County, rather than construct new disposal facilities. The utility was given six months from the date of the order to complete

the interconnection. The utility failed to interconnect its wastewater system to Pasco County. In addition, the utility was operating without a permit from DEP.

On November 4, 1991, the Commission issued Order No. 25296, which determined the utility's noncompliance with Order No. 24084. Order No. 25296 required the utility to:

- 1) Submit all necessary information for changing its certificated name, or revert to operating under its currently certificated name;
- 2) Immediately place in the escrow account all funds necessary to bring said account to its proper balance;
- 3) Install water meters for all of its customers; and
- 4) Improve the quality of service and interconnect with the Pasco County wastewater treatment system.

By Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission imposed a \$2,000 fine that had been previously suspended, and ordered the utility to show cause why it should not be fined for each item of noncompliance found in Orders Nos. 24084 and 25296. At the utility's request, these matters were set for hearing. By Order No. PSC-92-0356-FOF-WS, issued May 14, 1992, the Commission ordered the utility to issue credits to those customers who had paid a delinquent purchased power bill for the utility.

In June 1992, the utility completed the installation of all of the required water meters. By Order No. PSC-92-0723-FOF-WS, issued July 28, 1992, the Commission ordered the utility to implement the base facility and gallonage charge rates that had been approved in Order No. 24084. The utility implemented the new rates effective September 25, 1992.

A hearing regarding the utility's noncompliance with Orders Nos. 24084 and 25296 was held on January 7, 1993 in Zephyrhills, Florida. The utility, although it requested the hearing, did not attend the hearing. By Order No. PSC-93-0542-FOF-WS, issued April 9, 1993, the Commission:

- 1) Fined the utility in the amount of its rate base;
- 2) Ordered that a proceeding be initiated to reduce the utility's rates by the amount of pro forma plant not constructed and the amount of preventative maintenance not spent; and
- 3) Ordered that revocation proceedings be initiated.

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The utility filed a Motion for Reconsideration of Order No. PSC-93-0542-FOF-WS. By Order No. PSC-93-1396-FOF-WS, issued September 27, 1993, the Commission denied the Motion for Reconsideration and ordered the utility to sell or transfer the utility within 120 days of the issuance date of the order. The commission also voted to suspend the fine if a completed application for a transfer was submitted. The utility failed to transfer or interconnect the system within the 120 days. Therefore, the \$60,572 fine is due and payable. On October 19, 1993, the utility filed a Notice of Administrative Appeal of Order No. PSC-93-0542-FOF-WS.

On September 23, 1993, the Commission, pursuant to Section 367.111(1), Florida Statutes, and in accordance with Order No. PSC-93-0542-FOF-WS, noticed its Intent to Initiate Revocation of Certificates Nos. 451-W and 382-S issued to Shady Oaks. On October 18, 1993, Shady Oaks timely filed an objection to the Notice. Accordingly, this matter has been scheduled for an August 4-5, 1994, administrative hearing.

By a February 18, 1994 Agreed Order Granting DEP's Motion for Contempt, Judge Lynn Tepper ordered Shady Oaks to interconnect its wastewater treatment facility with Pasco County or sell the system within 120 days of the date of the Order, or June 18, 1994. On June 15, 1994, Judge Lynn Tepper granted in part and denied in part Shady Oaks' Motion for Extension of Time to Comply With Court Order. Judge Tepper ordered Shady Oaks to sell or convey its wastewater treatment facility free and clear of any encumbrances by July 18, 1994. The utility's request to extend the date on the option of the utility's interconnecting the system was denied.

On July 19, 1994, Attorney Gerald T. Buhr filed a Notice of Withdrawal of Counsel, wherein Mr. Buhr notified the Commission that his firm no longer represents Shady Oaks. Further, Mr. Buhr notified the Commission that Shady Oaks filed for bankruptcy in the Tampa Division of the United States District Court for the Middle District of Florida, under Case No. F94-6876-8G1. The utility has retained a bankruptcy attorney.

By Order No. PSC-94-0809-PCO-WS, the Prehearing Officer ordered Shady Oaks to file a status report on the Circuit Court action by July 20, 1994. To date, the status report has not been filed. Additionally, the utility owner, Richard D. Sims, failed to attend his deposition noticed (on July 11, 1994) to be taken at

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10:00 a.m. on July 22, 1994, at the Florida Public Service Commission in Tallahassee, Florida. The utility also failed to attend the Prehearing Conference held on Friday, July 22, 1994, in Tallahassee, Florida.

I hope that the series of events set forth above provide you with an understanding of the nature of these proceedings. For your convenience, I have attached a prehearing order for the August 4, 1994, hearing. If the Commission makes a bench decision on August 4, 1994, to revoke the utility's certificate, the Commission Staff intends to request that Pasco County petition the Circuit Court to appoint a receiver. If I may provide you with additional information, please contact our office at (904) 487-2740.

Sincerely,



Lila A. Jaber
Senior Attorney

LAJ/dr

Attachment: Prehearing Order

cc: Division of Water and Wastewater (Bethea, Galloway, Rieger)
Division of Records and Reporting